

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Consumer Protection in the Broadband Era)	WC Docket No. 05-271
)	

**REPLY COMMENTS OF THE MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

In the Matter of)
Consumer Protection in the Broadband Era) WC Docket No. 05-271

I. INTRODUCTION

Numerous state public utility commissions, incumbent local exchange carriers, competitive local exchange carriers as well as consumer advocacy groups and trade associations submitted comments. Pursuant to the NPRM, the MDTE submits these reply comments. To summarize, the MDTE asserts that market forces alone are

¹ In the Matter of Consumer Protection in the Broadband Era, WC Docket No. 05-271, Report and Order and Notice of Proposed Rulemaking, FCC 05-150 (rel. September 23, 2005) (“NPRM”).

insufficient to adequately protect broadband consumers; the MDTE therefore urges the FCC to adopt consumer protection rules for broadband Internet access service providers and to permit states not only to enforce federally mandated consumer protection requirements, but also to supplement federal regulatory requirements, if and when the need arises.

I. MARKET FORCES ALONE DO NOT ADEQUATELY ADDRESS CONSUMER PROTECTION GOALS

Competition in the broadband market is evident. In its Fourth Report,² the FCC observed that the percent of zip codes reporting four or more providers of high-speed lines has grown from 27.5 percent in June 2001 to 46.3 percent in December 2003.³ The FCC also reported that the subscription rates to broadband service has tripled

² Availability of Advanced Telecommunications Capability in the United States, GN Docket 04-54, Fourth Report to Congress, FCC 04-208, at 30 (rel. September 9, 2004) ("Fourth Report").

³ Id.

since February 2002.⁴ These figures show that competition in the broadband market, as a whole, is present and growing.⁵ Yet, in some regions of the country, broadband competition does not yet exist.

⁴ Id. at 10.

⁵ See also Industry Analysis and Technology Division, Wireline Competition Bureau, High-Speed Services for Internet Access: Status as of December 31, 2004 (July 2005) ("FCC Industry Analysis").

FCC data show that there is only one provider of broadband service in 12.5 percent of zip codes and no providers of broadband service in 6.8 percent of zip codes in the United States.⁶ Some sources report that in Western Massachusetts, approximately 18.4 percent of these rural communities have only one wireline broadband provider.⁷ These customers do not have the option of switching to another provider, as some commenters have suggested in their arguments opposing consumer protection regulatory requirements. Furthermore, because of the economics of serving rural areas, consumers in these parts of the country may not benefit from broadband competition for many years.⁸ Further, some sources report that in Western Massachusetts, approximately 27.5 of communities have no wireline broadband

⁶ FCC Industry Analysis at Table 12.

⁷ See Broadband Availability Database, John Adams Innovation Institute (August 22, 2005).

⁸ See A Nation Online: Entering the Broadband Age, U.S. Department of Commerce (September 2004).

provider at all.⁹ Certainly, for customers who will not benefit from competitive market forces, consumer protection rules must be adopted.

But, even in markets where competition exists (i.e., where customers can choose from at least two providers of reliable, quality broadband access service), a consumer protection “safety net” is still appropriate and necessary given the increasingly pervasive and important role broadband plays in people’s lives today. High-speed Internet access is becoming central to the lives of the majority of Americans, for occupational, educational, health and safety, recreational, and a host of other reasons. Just as basic consumer protections and standards for service quality and reliability were deemed essential for basic telephone service where market forces were not sufficient, such requirements should be adopted for broadband Internet access services.

Moreover, as the National Association of Regulatory Utility Commissioners (“NARUC”) points out in its comments, slamming, privacy concerning Customer Proprietary Network Information (“CPNI”), and deceptive billing practices are areas

⁹ See Broadband Availability Database, John Adams Innovation Institute (August 22, 2005).

where the market creates profit incentives for abuse, and thus, non-economic regulations to protect consumers are essential. For a customer whose CPNI has been unlawfully disclosed, or who has lost time and money as a result of deceptive or fraudulent business practices, the ability to switch to another broadband provider offers little comfort. Thus, explicit regulatory requirements regarding privacy and CPNI, slamming, deceptive billing practices, and discontinuance of service are necessary and desirable as a matter of public policy to prevent inappropriate activity from occurring in the first place. The MDTE agrees with NARUC's observation, and, thus, urges the FCC to impose a safety net to protect consumers.

In addition to the consumer protection areas identified in the NPRM, there are additional areas of consumer protection in which regulation is appropriate. For instance, consumer protection regulatory requirements should contain regulations to protect consumers when billing disputes arise. Regulations governing service terminations should also be included to specifically address Internet-based phone services, such as Voice over Internet Protocol ("VoIP").

The New York Public Service Commission ("NYPSC") suggested in its initial comments that non-economic regulations should address network reliability and service quality issues. The MDTE agrees with the NYPSC that network reliability and service quality should be addressed, particularly for residential and small businesses who lack market power. As the FCC has noted, broadband is widely deployed in large

businesses, and, thus, “the future of broadband . . . depends on its deployment to the consumers and small businesses whose economic activities generate most of our economic growth.”¹⁰ Thus, ensuring that residential and small business consumers have access to reliable, high-quality broadband service should be a priority.

Finally, consumers, particularly residential and small business consumers, must have access to sufficient information to make informed decisions concerning the provision of broadband services, including but not limited to details regarding the capabilities of the broadband service, as well as advance notice of price changes. Currently, broadband is offered over cable, copper, and fiber technologies; via satellite and wireless technologies; and, finally, over power lines. The pace of new technological developments, as well as developments in services and applications of broadband, has been, and will continue to be, dramatic. Requirements as to the provision of information to consumers regarding the array of broadband options is crucial for informed consumer choice, and, thus, to the future of broadband.

III. FEDERAL REQUIREMENTS, STATE ENFORCEMENT

¹⁰ Fourth Report at 44.

In the NPRM, the FCC requested comments on NARUC's "functional approach" to telecommunications regulation. Under this functional approach, regulatory function is based upon the relative interests and abilities of the state and federal governments. With regard to consumer protection issues, the functional approach would assign the responsibility of maintaining consumer protections to the states. The MDTE fully supports this functional approach to consumer protection.

States have performed the consumer protection role efficiently and effectively. States are in a better position than the federal government to handle individual consumer complaints, whether on an informal basis or in a formal proceeding, and to address the unique market conditions in each state. As NARUC has remarked, "[E]ffective consumer protection depends largely on where the consumer is domiciled."¹¹ Indeed, if consumers must seek relief beyond their state's borders, some consumers, particularly small business and residential consumers who lack resources, may be deterred from pursuing consumer protection complaints. Thus, empowering states to address consumer complaints is necessary to ensure all consumer protection goals are met.

The federal government has recognized the importance of state involvement in the consumer protection arena in its regulatory framework for slamming and cramming

¹¹ NARUC Legislative Task Force Report on Federalism and Telecommunications, at 3 (July 2005).

complaints, where states have accepted the responsibility to enforce federal standards.

States, however, should be given not only the authority to enforce federal consumer protection standards, but also the authority to establish additional standards and requirements as the need arises. With the constantly evolving broadband market, states should be granted the flexibility to protect consumers as circumstances change.

While some commenters raise concerns about the potential for different regulations for each individual state, placing the burden on the consumer to determine where to seek redress would be a greater injustice. States currently are responsible for maintaining consumer protections in a wide array of areas, and by divorcing the responsibility for maintaining consumer protections in the broadband market from the states, the potential for consumer confusion is likely. Accordingly, to effectively meet consumer protection goals, the responsibility for consumer protection in the broadband market should rest with the states.

IV. CONCLUSION

Competitive market forces alone will not adequately address the consumer protection issues raised by the FCC in the NPRM, and, therefore, the FCC should adopt basic consumer protection rules for broadband Internet access service providers. In addition, state regulators

Reply Comments of the Massachusetts Department of
Telecommunications and Energy
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have an important role to play to ensure that consumers are adequately protected
through state enforcement of non-economic consumer protection requirements, and by
augmenting federal standards where appropriate to meet localized needs of consumers.

Respectfully submitted,

Commonwealth of Massachusetts
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By:

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